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August 22, 1994

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Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: GC Docket No. 92-52
Reexamination of Policy Statement On
Comparative Broadcast Hearings

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding, on behalf of our client, Irene Rodriguez Diaz de McComas, are an original and nine (9) copies of "**Reply Comments of Irene Rodriguez Diaz de McComas**".

Please direct all responsive communications to Jerome S. Boros at this firm's New York office or to the undersigned.

Very truly yours,

Jerold L. Jacobs

cc: John I. Riffer, Esq.
Robert A. Zauner, Esq.
Roy F. Perkins, Jr., Esq.
Timothy K. Brady, Esq.
John L. Tierney, Esq.
(all w/enc.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 2 2 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket No. 92-52

TO: The Commission

REPLY COMMENTS OF IRENE RODRIGUEZ DIAZ de McCOMAS

IRENE RODRIGUEZ DIAZ de McCOMAS ("Mrs. McComas"), pursuant to §1.415(c) of the Commission's Rules, replies to Comments filed by various parties in response to the Second Further Notice of Proposed Rulemaking ("SFNPR"), FCC 94-167, released July 22, 1994, in this proceeding. In addition, pursuant to §1.423 of the Rules, Mrs. McComas requests that, following Commission analysis of the presentations herein, oral argument, hearing, or a series of panel discussions be held before the Commission en banc before the agency modifies the comparative broadcast criteria. In support whereof, Mrs. McComas shows the following:

I.

1. Mrs. McComas filed comments on July 22, 1994, which addressed the underlying thesis of the Court's ruling in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993), namely, that the Commission has been off-base in its use and application of comparative standards in broadcast cases. Several commenta-

tors supported one or more of Mrs. McComas' positions; some contended for different positions which have surface appeal, such as Jerome Thomas Lamprecht. Mrs. McComas hereby replies to, and comments on, such presentations.

II.

2. Lamprecht's comments, submitted as reply comments, essentially support the present policy whereby the Commission arbitrarily denies a preference in broadcast licensing to women, while simultaneously granting such a preference in other types of licensing. Lamprecht also seeks a scrapping of local residence/civic credit and an upgrading of credit for past broadcast experience. None of Lamprecht's self-serving arguments has an authentic claim upon the Commission's adjudicative standards.

A.

Gender Preference

3. The basic predicates for treating women equally in all Commission licensing have been stated in Mrs. McComas' opening Comments, and repetition would be idle. Henry Geller's comments also recognize the necessity for according a female preference, although his rationale is to promote diversity in viewpoint through female ownership. As Geller correctly observes (at 3), media diversification remains a criterion of the greatest importance to the public interest regulation of broadcasting, and the proposed participation of

women (and minorities) in ownership can be readily and objectively identified in broadcast applications without resort to the kinds of untested regulatory presumptions that Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992), questions.

4. At all events, the reasonableness of encouraging female ownership of broadcast stations is self-evident. Women no less than any in-group support and foster the views of their peer group. The Communications Act of 1934, as amended (the "Act") and the Commission historically have recognized such in-group solidarity. Thus, the Act broadly bans aliens from control of broadcast stations lest their loyalties be extra-territorial. And §307(b) of the Act is premised on localism and communal unity.

5. On the administrative level, the comparative preference adopted by the Commission for local residence/ civic is steeped in the concept that people "take care of their own." And a root cause for the Commission's EEO policy is its awareness that women's participation in broadcasting will bring better balance and diversity to broadcast content. Certainly the need exists. It is open and notorious that our society discriminates overall against women, in private as well as in public life, in the military as severely as in civilian society, in business as in the home. The mass media are awash with news of battered wives, incestuous abuse of females, and discriminatory practices in the armed forces, extending to physical assaults ("Tailhook") and to continued economic denial and exploitation of women.

6. A partial answer lies in according women an appropriate preference in broadcast licensing. Such preference necessarily will pass constitutional muster by the Supreme Court unless other Congressional initiatives designed to prefer women in FCC licensing are struck down. Indeed, the imperatives for preference -- diversity of viewpoint -- are stronger in broadcast licensing.

7. In this connection, Mrs. McComas' Comments (at ¶4) pointed out that Congress recently added §309(j)(4)(D) to the Act, specifically directing the Commission to "ensure that... businesses owned by...women are given the opportunity to participate in the provision of spectrum-based services... [via] bidding preferences...." This declared Congressional intent to confer a Gender Preference in PCS matters was construed by the Commission as a "directive" and a "mandate" to adopt such a female bidding preference in the Fifth Report And Order in PP Docket No. 93-253, FCC 94-178, ¶9, released July 15, 1994. Moreover, in H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 255, reprinted in 1993 U.S.C.C.A.N. 378, 582, the House Budget Committee stated (emphasis added):

> The Committee adopted an amendment to ensure that all small businesses will be covered by the Commission's regulations, including those owned by... women. The Committee recognizes that, unlike mass media licenses, where diversity in ownership contributes to diversity of viewpoints, most of the licenses issued pursuant to the competitive bidding authority...will be for services where the...gender of the licensee will not affect the delivery of service to the public. Nevertheless, the Commission should adopt regulations...to ensure that businesses owned by...women are not in any way excluded from the competitive bidding process.

8. Thus, the legislative history of §309(j)(4)(D) clearly states Congress' conclusion that a Gender Preference is in the public interest, even where female ownership will have no impact on the delivery of services. A fortiori, a Gender Preference is warranted in comparative broadcast proceedings, where diversity of ownership may have an effect upon diversity of viewpoint. For all of these reasons, Mrs. McComas submits that a Gender Preference should be reestablished by the Commission and may be done so without affronting the Lamprecht case.

B.

Local Residence/Civic Activity

9. Lamprecht stretches Bechtel in an attempt to undermine credit for localism. Nothing in Bechtel requires such downgrading. Localism derives its sinew from statute (§307(b) of the Act) and from long-standing and reasonable agency policy and horse-sense. A local resident with community interests is more likely to provide superior service to her/his community than an out-of-towner. Apart from pride in community, a local resident is subject to community and neighbor pressure. The entire fabric of American life is based on community roots, and Lamprecht's arguments against according credit to localism constitute a departure from norms which should be rejected.

10. To be sure, as Mrs. McComas pointed out in her opening Comments, credit should depend on a solid record of

ongoing community activity. Inert local residence belies any community interest and should not receive any credit whatsoever. Episodic one-night stands, such as lectures in a community and other so-called "good works," on occasion erroneously have been credited by the Commission in a departure from logical application of the rationale for giving merit for community activity -- namely knowledge of, and service to, the community. Moreover, not only do such contacts fail to yield knowledge of community needs, let along aid in responding to them, but according credit for "good works" tends to favor "establishment" figures over disadvantaged newcomers; in particular, such credit undercuts minority credit.

C.

Previous Broadcast Experience

11. Lamprecht notes that Bechtel identified "broadcast experience as a far superior indicator of potential broadcast success than the criteria previously emphasized by the Commission." Lamprecht is correct, insofar as he goes, but the Bechtel Court recognized that policy-making, provided that it is reasonable, is for the Commission. In making policy, the Commission's focus should be on the public interest rather than merely on "broadcast success." Thus, the Commission must consider whether granting credit for broadcast experience is consonant with bedrock governmental policy goals, such as increasing diversity in ownership and viewpoint, which takes

on more urgency, given the continued need to promote minority entry.

12. Past broadcast experience should garner no more than slight credit. As Mrs. McComas' opening Comments noted, only recent experience should count; sensible people do not rely for treatment on physicians who do not keep up with professional developments, and in broadcasting -- a dynamic field -- it is other-worldly for the Commission to give credit for atrophied experience. A sound policy would accord credit only for broadcast experience which was meaningful, substantial in time, essentially managerial, and of recent origin -- certainly within the last seven years.

III.

13. Plainly, new comparative standards may require further hearings. Hearing records have become old and cold. As Mrs. McComas said in her opening Comments, such further hearings are unlikely to be of extended duration, but, long or short, principled adjudication requires updated adjudication, in appropriate contexts.

IV.

14. In recent years, the Commission has held oral en banc proceedings in conjunction with its deliberations on difficult and far-reaching policy matters. See, e.g., December 14, 1990 en banc hearing in the financial interest and syndication rulemaking proceeding (MM Docket No. 90-162);

March 15, 1990 en banc hearing in St. Louis, Missouri concerning cable television regulatory issues. Given the significance of the subject rulemaking proceeding for establishing revised comparative broadcast criteria, Mrs. McComas urges, pursuant to §1.423 of the Rules, that the Commission's deliberative process would be aided by an oral argument, hearing, or a series of panel discussions (as in MM Docket No. 90-162) before the Commission adopts revised comparative criteria.

Respectfully submitted,

IRENE RODRIGUEZ DIAZ de McCOMAS

By _____
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Dated: August 22, 1994